

# Vermont Natural Resources Council

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Before the  
FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

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In the Matter of

Procedures for Reviewing Requests for Relief  
from State and Local Regulations Pursuant to  
Section 332 (c) (7) (B) (v) of the  
Communications Act of 1934

WT Docket No. 97-19<sup>2</sup>~~7~~

Preemption of State and Local Zoning and  
Land Use Restrictions on the Siting,  
Placement and Construction of Broadcast  
Station Transmission Facilities

MM Docket No. 97-182

## COMMENTS OF THE VERMONT NATURAL RESOURCES COUNCIL

1. The Vermont Natural Resources Council (VNRC) is Vermont's leading non-profit environmental organization representing 5,000 families, individuals, organizations, and business members. VNRC was founded in 1963 by a group of forward-looking foresters, educators, farmers, outdoor enthusiasts, and other Vermonters who cared deeply about the state and its future and wanted to preserve its working landscape. The purpose of the

VNRC is to protect Vermont's natural resources and environment for present and future generations through research, education, and advocacy. VNRC's influence is apparent in landmark accomplishments through the years. Its work in advocacy and citizen education has been critical in building support for Act 250 (the state's land use and development law), Act 200 (the state's growth management law), Current Use Appraisal for farm and forest land, forest protection legislation, enforcement of the federal Clean Water Act, wilderness designations, the Bottle Bill, and countless other environmental protections.

2. In the past two years, VNRC has become increasingly more involved in issues relating to the siting of broadcast and telecommunications facilities. Our March 1997 magazine, *Vermont Environmental Report*, featured the issue. Also, in August 1997, we published a report entitled, Telecommunications and Broadcasting Transmission Facilities in Vermont: Update on An Industry, For Citizens, Legislators and Municipal Officials.

VNRC has also been engaged in advocacy for sensible review of broadcast and telecommunications facilities in both the 1996 and 1997 legislative sessions. A bill passed in 1996 gives authority to the Secretary of Administration to make available state property and buildings for cellular communications facilities. As part of the bill, a study of the public health risks of nonionizing electromagnetic radiation was conducted by the Vermont Commissioner of Public Service. Another provision requires the Agency of Natural Resources to review any proposal for facility siting on state park or forest land for consistency with the state management plan for the land.

In 1997, VNRC was supportive of a bill passed by the legislature giving the state jurisdiction, through Act 250, over new construction of communications towers more than 20 feet high.

VNRC also presented comments to the Vermont Environmental Board proceedings on a proposed "protocol" for reviewing communications facilities under Act 250. The "protocol" was adopted in the fall of 1996.

Our members are concerned about the environmental, aesthetic, and possible public health issues associated with telecommunications and broadcast facilities. Vermonters treasure the high quality of life which the Green Mountain State offers. Outdoor recreation is as important to our economy as it is to our way of life. Whether we are hiking the fabled Appalachian Trail or our own Long Trail, or alpine or nordic skiing at Stowe's Mount Mansfield or Killington, Vermonters are ever more frequently aware of the encroachment into these areas by the broadcast and telecommunications industries. High elevation wildlife habitat for migratory songbirds like the Bicknell's thrush and the black bear has been threatened by development on several mountains in the state. And there is a fear that our tourism base, one of the mainstays of Vermont's economy, will erode if telecommunications and broadcast facilities are allowed to sprout up across the state without proper review.

3. We are aware that the FCC has heard from other commenters from Vermont, including our entire congressional delegation, governor's office, and the Vermont Environmental Board, on the importance of Act 250, Vermont's Land Use and Development Law. In its October 8, 1997, memorandum regarding WT Docket No. 97-197, the Vermont Environmental Board described in detail the workings of Act 250. Passed in 1970, the law has worked remarkably well at balancing Vermont's two major goals of achieving a prosperous economy while protecting the environment. VNRC's 1992 study, Act 250: A Positive Economic Force for Vermont, noted that Act 250 contributed to the relative health of Vermont's banking industry compared to other New England states, helped keep Vermont's unemployment rate 1.5-2 points below the national average, and assisted

Vermont in achieving a high national rating on factors encouraging manufacturing development. The study also noted that Act 250 was one of the primary reasons that Vermont's environmental quality was rated second best in the country. By protecting Vermont's natural resources, Act 250 also protects the significant revenues generated by tourism, residential recreation, "Green Trade", agriculture, and forestry. Together, these sectors contribute over a billion and a half dollars to the Gross State Product.

Moreover, Act 250 is well-run, efficient, and fair. Application processing times are fairly short, with the majority of all applications completed within two months, over 80% in four months, and over 90% processed within six months. Very few applications are denied, and only a handful are appealed. Although there is a fairly rigorous procedure for gaining party status in the Act 250 process, citizens and groups like VNRC have gained a reputation for providing high quality expert testimony and important information to the nine district commissions and Environmental Board which administer the law. According to the Environmental Board's October 8, 1997, memo: "For the period January 1990 through December 1995, there were a total of 66 permit applications for new support structures, or the expansion of existing support structures (for communications facilities). Of the 66 applications, 58 received permits and only 2 were denied."

In Act 250, the burden of proof lies primarily with the applicant. The proposal in WT Docket No. 97-197 would shift this burden to opponents, who often are at a disadvantage. This strikes us as patently unfair and contrary to the rules that have served us well in Vermont. We are also concerned that this Docket would limit evidence, as to admissability and relevance, in state and local land use proceedings.

Throughout its 27 year existence, Act 250 has demonstrated that it can effectively deliver an expeditious permitting system that fosters a strong

economy and a healthy environment. VNRC does not believe that any further preemption on the part of the FCC regarding either telecommunications or broadcast facilities would hasten or enhance the deployment of these facilities in Vermont. On the contrary, the proposals before the FCC would interfere with the well-conceived and executed operation of Act 250 and would seriously jeopardize state and local control of land use decision-making.

4. With respect to local control of land use decisions, we are disappointed with the preemption language of the Telecommunications Act of 1996 which says that state and local governments cannot prohibit the provision of personal wireless services nor can they regulate wireless facilities on the basis of "environmental effects" of radio frequency emissions as long as the facilities comply with FCC emissions regulations. Fortunately, the TCA did not carve out a preemption for siting broadcast facilities comparable to that for personal wireless services. But the rules currently before the FCC take a giant step in that direction. We believe these proposed rules are unnecessary.

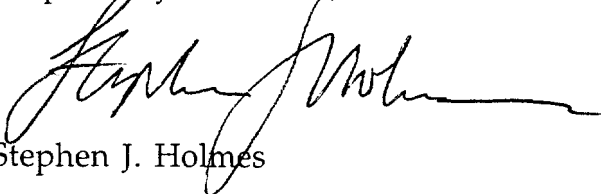
Vermont has a long tradition of local control. We work out many of our problems quite well through annual town meetings. We also have a pretty good system for land use planning to complement the Act 250 process discussed above. In 1988, the legislature passed Act 200, Vermont's Growth Management Law, which encourages comprehensive land use planning at the local, regional, and state agency levels. The plans are coordinated among the three levels and address a common set of state planning goals. Local and regional plans are given weight in the Act 250 process, and state agencies, regional planning commissions, and municipalities are also statutory parties in Act 250 proceedings. Some of the plans prepared have already addressed the issue of siting communications facilities, such as the Windham Regional Plan which urges co-location. VNRC believes that the process Vermont has developed will, as the plans are prepared and updated, allow for the

deployment of broadcast and telecommunications facilities within a reasonable time frame and ensure consideration of Vermont's planning and environmental goals. Federal preemption would tear the fabric of this carefully constructed system and may not achieve the intended results. It would certainly do nothing to improve the relationship between the federal government and the people of Vermont.

#### 5. Conclusion

Vermont has a long-established and well-crafted system for making decisions in state and local land use matters. It has served the state well, balancing the need for a sound economy with the protection of our natural resources. It has also resulted in timely deployment of telecommunications and broadcast facilities in this state. Further preemption of state or local authority over the siting of these facilities as contemplated in either WT Docket No. 97-197 or MM Docket No. 97-192 would not be in the best interests of the State of Vermont. The Vermont Natural Resources Council respectfully requests that the Federal Communications Commission not adopt these proposed rules and take no further action which would preempt state and local authority over the siting of telecommunications and broadcast facilities.

Respectfully submitted,



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Vermont Natural Resources Council

November 25, 1997